



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
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Mr. Jack V. Ferguson
NPDES Permits Branch
Region 6
United States Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Dear Mr. Ferguson:

This correspondence is in reply to the November 17, 2003, letter from the United States Environmental Protection Agency (EPA) requesting section 7 consultation from the National Marine Fisheries Service (NMFS), pursuant to the Endangered Species Act of 1973 (ESA). The EPA has requested written concurrence with their determination that the re-issuance of a National Pollutant Discharge Elimination System (NPDES) general permit for the Territorial Seas of Texas is not likely to adversely affect federally-listed marine species or critical habitat.

The NPDES general permit for the New and Existing Sources in the Oil and Gas Extraction Point Source Category for the Territorial Seas Offshore of Texas, hereinafter referred to as the Territorial Seas general permit, is proposed to be reissued. The permit is proposed to be updated to include water quality-based limitations consistent with current NPDES permits and State Water Quality Standards. Limits and monitoring are proposed to ensure the discharged waters are not toxic to marine life. Additionally, more current technology-based limits established by Effluent Limitations Guidelines for the oil and gas extraction industry (40 CFR 435, Subpart A) are proposed to be included in the reissued permit. The proposed project area is to include the territorial seas of Texas, defined in Clean Water Act section 502 (8) as "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open seas and the line marking the seaward limit of inland water, and extending seaward a distance of three miles."

The Clean Water Act Section 402 authorizes the EPA to issue NPDES permits to regulate discharge into the nation's waters. EPA will issue a permit if they determine that the proposed discharges will not result in unreasonable degradation. Factors for determining unreasonable degradation (40 CFR 125.122) that pertain to this consultation are :

1. The quantities, composition, and potential for bioaccumulation or persistence of the pollutants to be discharged;
2. the composition and vulnerability of the biological communities which may be exposed to such pollutants, including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the ESA, or the presence of those species critical to the structure or function of the ecosystem, such as those important for the food chain; and



3. the importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism.

The proposed permit would allow discharges from existing source facilities, new source facilities, and new discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category located in and discharging to lease blocks in the Territorial Seas of Texas. These facilities are engaged in the production, field exploration, drilling, well production, and well treatment in the oil and gas industry. The types of discharges covered by the proposed permit are drilling fluids, drill cuttings, deck drainage, produced water, produced sand, well treatment, completion fluids and workover fluids, sanitary waste, domestic waste, desalinization unit discharges, blowout preventer control fluid, uncontaminated ballast/bilge water, uncontaminated freshwater, mud, cuttings and cement at the sea floor, uncontaminated seawater, boiler blowdown, source water and sand, diatomaceous earth filter media, excess cement slurry, and chemically treated seawater and freshwater.

EPA is requiring acute testing procedures to ensure that the produced water discharges are not toxic to human, terrestrial wildlife, or aquatic life. Testing procedures will include aquatic toxicity testing which will ensure that there is no chronic toxicity outside the mixing zone. The two tests specified in the permit are the *Mysidopsis bahia* acute static renewal 48-hour definitive toxicity test and the *Menidia beryllina* acute static renewal 48-hour definitive toxicity test. Both the monthly average and the minimum toxicity (48-hour NOEC) values shall not be less than the effluent dilution as calculated at the edge of the mixing zone. Permittees will be required to prepare a full report and submit it to EPA. Additionally, the volume of discharges is relatively low when compared to those platforms discharging in the territorial seas of Louisiana and therefore is expected to be a significantly reduced impact for the discharges than other locations in the Gulf of Mexico. You have found, based on the factors mentioned above, that the proposed permit will not result in unreasonable degradation of the marine environment.

Your documents state ESA-listed species known to occur in Texas marine waters include: Gulf sturgeon (*Acipenser oxyrinchus desotoi*), northern right whale (*Eubalaena glacialis*), blue whale (*Balaenoptera musculus*), finback whale (*Balaenoptera physalus*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter macrocephalus*), Kemp's ridley turtle (*Lepidochelys kempi*), loggerhead turtle (*Caretta caretta*), leatherback turtle (*Dermochelys coriacea*), hawksbill turtle (*Eretmochelys imbricata*), and green turtle (*Chelonia mydas*). However, Gulf sturgeon have not been documented in Texas and therefore the effects of the proposed action on Gulf sturgeon are not considered further in this consultation. No critical habitat has been designated in Texas.

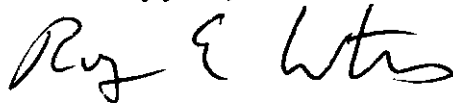
NMFS acknowledges that scientific studies on the effects of contaminants associated with oil and gas extraction on listed species have been few, and existing data are not sufficient to be conclusive. NMFS is not aware of any documented take of listed species associated with activities like that of the proposed action. Although, sewer discharges and chemical pollution are listed as potential threats to listed species in their recovery plans, the concentrations of the discharges allowed by the proposed permit are not to be toxic to marine life. Additionally, the results of the bioaccumulation study summarized in your report documented no potential for bioaccumulation of the discharge contaminants in biota associated with discharging platforms when compared to biota associated with non-discharging platforms. Because the proposed NPDES permit seeks to improve water quality in the territorial seas off Texas by creating more stringent standards than current standards, the EPA requires acute testing procedures to ensure discharges are not toxic, and the volume of the discharges is likely to be very low, NMFS concurs with your determination that the proposed action will not likely adversely affect listed species under NMFS' purview.

This concludes consultation responsibilities under section 7 of the ESA for the proposed actions for federally-listed species, and their critical habitat, under NMFS' purview. Consultation should be reinitiated if: (1) there is a take; (2) new information reveals impacts of the identified action that may affect listed species or critical habitat in a manner not previously considered; (3) this action is subsequently modified in a manner which was not considered in this assessment; or (4) a new species is listed or critical habitat designated that may be affected by the identified action.

The action agency is also reminded that, in addition to its protected species/critical habitat consultation requirements with PRD pursuant to section 7 of the ESA, prior to proceeding with the proposed action the action agency must also consult with NMFS' Habitat Conservation Division (HCD) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act's requirements for essential fish habitat (EFH) consultation (16 U.S.C. 1855 (b)(2) and 50 CFR 600.905-.930, subpart K). The action agency should also understand the ESA and EFH processes; that ESA and EFH consultations are separate, distinct, and guided by different statutes, goals, and time lines for responding to the action agency; and that the action agency will receive separate consultation correspondence on NMFS letterhead from HCD regarding their concerns and/or finalizing EFH consultation. Consultation is not complete until EFH and ESA concerns have been addressed. If you have any questions about EFH consultation for this project, please contact Mr. Swafford at (409) 766-3699.

If you have any questions, please contact Jennifer Moore, natural resource specialist, at the number listed above or by e-mail at Jennifer.Moore@noaa.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Roy E. Crabtree".

Roy E. Crabtree, Ph.D.
Regional Administrator

cc: F/PR3
F/SER42 - Russell Swafford

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